

JAN 19 2006

PTO/SB/21 (09-04)

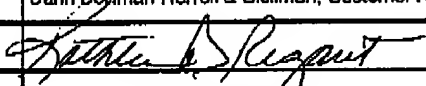
Approved for use through 07/31/2008. OMB D651-0031

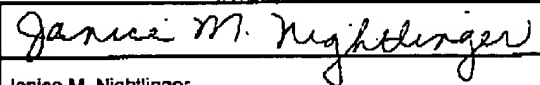
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/782,874
	Filing Date	February 8, 2001
	First Named Inventor	Michael Wassenecker, et al.
	Art Unit	1838
	Examiner Name	David T. Fox
Total Number of Pages in This Submission	Attorney Docket Number	4476-P03504US01

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input checked="" type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks In the event the check is improper, or the fee calculation is in error, the Commissioner is authorized to charge any underpayment or credit any overpayment to the account of the undersigned attorneys, Account No. 04-1406. A duplicate copy of this sheet is enclosed.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Dann Dorfman Herrell & Skilman, Customer No. 000110	
Signature		
Printed name	Kathleen D. Rigaut, Ph.D., J.D.	
Date	January 19, 2006	Reg. No. 43,047

CERTIFICATE OF TRANSMISSION/MAILING 571-273-8300		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name	Janice M. Nightlinger	Date January 19, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED
CENTRAL FAX CENTER

JAN 19 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of) Examiner: David T. Fox
Michael Wassenegger et al.) Art Unit: 1638
Serial No. 09/782,874)
Filed: February 8, 2001)
For: "Nucleic Acid Molecules)
Encoding Polypeptides)
Having The Enzymatic)
Activity of an RNA-)
Directed RNA Polymerase)
RdRP"

REMARKS AND SUMMARY OF TELEPHONIC INTERVIEW

Applicants were contacted by Examiner Fox on or about December 12, 2006 who indicated that a double-obviousness type double patenting rejection should have been raised against currently pending claim 29 over claim 11 in issued in US Patent 6,218,142. While not agreeing with the Examiner, Applicants hereby submit a Terminal Disclaimer, thereby rendering the foregoing rejection moot.

TERMINAL DISCLAIMER RESPONSIVE TO
OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

The above-identified patent application (hereinafter "the '874 application"), is owned by Plant Biosciences, Ltd. hereinafter "Assignee"), as evidenced by an assignment filed with the U.S. Patent and Trademark Office on October 18, 2004 a copy of which is submitted herewith.

Assignee, by its undersigned agent, who is agent of record in the '874 application, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the '874 application which would extend

01/23/2006 YPOLITE1 00000012 041406 09782874

1

01 FC:2814

65.00 DA

beyond the expiration date of the full statutory term, as defined in 35 U.S.C. §§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of U.S. Patent 6,218,142 of which Assignee is the owner of all right, title and interest.

Assignee, by its undersigned agent, hereby agrees that any patent so granted on the '874 application shall be enforceable only for and during such period that the legal title to such patent shall be the same as the legal title to U.S. Patent 6,218,142, this agreement to run with any patent granted on the '874 application and to be binding upon the grantee, its successors or assigns.

In making the foregoing disclaimer, Assignee does not disclaim the terminal part of any patent granted on the '874 application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of U.S. Patent 6,218,142 as presently shortened by any terminal disclaimer filed prior to patent grant, in the event that the 6,218,142 patent expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321, has all claims cancelled by a reexamination certificate, is reissued or is in any manner terminated prior to expiration of its full statutory term as presently or subsequently shortened by any terminal disclaimer, as the case may be, except for the separation of legal title stated above.

Applicants are entitled to small entity status.

Respectfully submitted,

DANN, DORFMAN, HERRELL AND SKILLMAN
A Professional Corporation

By 

Kathleen D. Rigaut, Ph.D.
PTO Registration No. P43,047

Telephone: (215) 563-4100

ASSIGNMENT AGREEMENT

THIS AGREEMENT is made the 1st day of February 2003 ("the Effective Date").

BETWEEN:

- 1 DR MICHAEL WASSENEGGER of Schellingstrasse 22, RGB, 80799 München, Germany
- 2 MR STEFAN RÜHM of Lena-Christ Strasse 4, 82152 Martinsried, Germany,
(jointly "the Assignors")

and

- 3 PLANT BIOSCIENCE LIMITED whose registered office is at Norwich Research Park, Colney Lane, Norwich, Norfolk, NR4 7UH, UK ("the Assignee").

DEFINITIONS:

The term "Invention" shall mean the intellectual property in respect of US patent application 08/8:1,583 and US patent 6,218,142 entitled "Nucleic acid molecules encoding polypeptides having an enzymatic activity of an RNA-directed RNA polymerase (RdRP)", US patent application 09/782,874 and any divisional applications or continuations or continuations-in-part or renewals or extensions or reissues of such patents and patent applications; and improvements relating thereto that may be developed by or under the supervision of the Assignors.

RECITALS:

- (A) The Assignors has agreed to assign the Invention to the Assignee for the consideration herein mentioned
- (B) Whereas the Assignors warrant, by way of an agreement with Garching Innovation GmbH in June 1999 and an agreement between one of the inventors Dr Leonhard Riedel and Mr Stefan Rühm dated 27th March 2001, to be the sole joint owners of the title, the exclusive rights and all interests in those aspects of the Invention

OPERATIVE PROVISIONS:

In consideration for the payment of £1 (one pound) by the Assignee to the Assignors receipt of which is hereby acknowledged by the Assignor:

- 1 The Assignors hereby assign absolutely to the Assignee with full title guarantee and free from any encumbrances:
 - 1.1 the whole or any part of the property and all rights in the Invention;
 - 1.2 all rights, title and interest in and to any patent applications relating to the Invention together with all rights and powers arising or accrued there from;

- 1.3 the rights to apply for, prosecute and obtain patent or similar protection throughout the world (including without limitation in the United States of America) in respect of the invention to the intent that the grant of any such patent or similar protection shall be in the name or and vest in the Assignee or its successors in title;
- 1.4 the right to apply for one or more British Patents and the right to claim priority from such British Patent Applications with respect to all applications worldwide (including without limitation in the United States of America) for patent or similar protection for the invention.
- 2 The Assignors further agree that at the request and cost of the Assignee and that each of the Assignors will at all times hereafter do all such acts and execute all such documents as may reasonably be necessary or desirable both to secure the vesting in the Assignee of all rights assigned to the Assignee hereunder and to assist in the resolution of any question concerning the invention or any patent or patent application relating to the invention. For the avoidance of doubt, Assignee shall from the Effective Date be solely responsible for all future patent costs relating to the invention.
- 3 Within 30 (thirty) days of the Effective Date of this Agreement, Assignee shall pay 5,000 (five thousand) EURO to the Assignors ("the Initial Payment"). Within 30 (thirty) days of the first anniversary of the Effective Date of this Agreement, Assignee shall pay a further 5,000 (five thousand) EURO to the Assignors ("the Second Payment"). Furthermore, the Assignee shall pay to the Assignors, 60 % (sixty per cent) of all Net Revenue received by the Assignee from licensing rights to, or otherwise exploiting commercially, the invention, until the total cumulative payment made to the Assignors by the Assignee, including the Initial Payment and the Second Payment, is 100,000 (one hundred thousand) EURO. Thereafter, the Assignee shall pay to the Assignors, 40 % (forty per cent) of all Net Revenue received by the Assignee from licensing rights to, or otherwise exploiting commercially, the invention. For the purposes of this Agreement, "Net revenue" shall be defined as being revenue after deduction of the Assignee's external patent expenditures in respect of filing, prosecuting, maintaining and defending patent rights in the invention, the Initial Payment, the Second Payment and reasonable and prior agreed costs incurred by Assignee with third parties in order to further develop the invention. All such payments under this Agreement shall be paid to the Assignors by the Assignee in the following way: 73% (seventy three per cent) to Dr Michael Wassenecker and 27% (twenty seven per cent) to Mr Stefan Röhm. From such payments the Assignors shall be solely responsible for any revenue sharing obligations they have, if any, to other inventors of the invention, German federal funding agencies and/or Garching Innovation GmbH.
- 4 The Assignee shall use its reasonable endeavours to obtain and conclude agreements with licensees in respect of the invention. The Assignors shall promptly inform the Assignee of any potential licensees of which it becomes aware. The Assignee will consult with the Assignors regarding the Assignee's intentions to commercially develop and exploit the invention, but the Assignee will have the right at its sole discretion to commercially develop and exploit the invention in the way it reasonably deems suitable.
- 5 If at any time, the Assignee decides not to pursue the protection and commercialisation of the invention, it shall promptly inform the Assignors and offer to assign back to the Assignors, at no cost to the Assignors, the rights assigned to the Assignee herein. If at any time, the Assignee goes into compulsory or voluntary liquidation or if a receiver or administrator is appointed in respect of the whole or any part of its assets, it shall promptly inform the Assignors and offer to assign back to the Assignors, at no cost to the Assignors, the rights assigned to the Assignee herein.


- 8 The Assignors shall retain the right to conduct non-commercial research with the invention and to publish the results of research in the invention, subject always to providing the Assignee with full details of any proposed written, oral, electronic or other disclosure or any new results relating to the invention, at least 30 (thirty) days in advance of such disclosure in order that the Assignee has a reasonable period to protect intellectual property rights in the results or propose amendments to the proposed disclosure. The Assignors may transfer tangible research materials relating to the invention, to academic third parties for bona fide academic research, subject to the execution of a written Materials Transfer Agreement, which the Assignee will conclude with such third parties prior to such transfer taking place.

AS WITNESS the signatures of the parties hereto:


SIGNED for and on behalf of DR MICHAEL WASSENEGGER

5th Feb 2003 
Date:

SIGNED for and on behalf of MR STEFAN RÜHM

5th Feb 2003 
Date:

SIGNED for and on behalf of PLANT BIOSCIENCE LIMITED


Name: Dr A J S Chojecki
Official Capacity: Managing Director
Date: 29th January 2003

RECEIVED
CENTRAL FAX CENTER

JAN 19 2006

FEE TRANSMITTAL	Complete if known
	Application Number: 09/782,874
	Filing Date: February 8, 2001
	First Named Inventor: Michael Wassenegger, et al.
	Group Art Unit: 1638
	Examiner Name: Georgia L. Helmer
Total Amt. of Payment: (1)+(2)+(3)= \$65	Attorney Docket Number: 4476-P03504US01

METHOD OF PAYMENT (check one)		FEE CALCULATION (continued)																																									
1. The Commissioner is hereby authorized to: <input checked="" type="checkbox"/> Charge indicated fees <input type="checkbox"/> Charge additional fees <input type="checkbox"/> Credit overpayments to the account of DANN, DORFMAN, HERRELL & SKILLMAN Deposit Account Number <u>04-1406</u>		ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>Surcharge-late filing fee or oath</td><td></td></tr> <tr><td>Surcharge - late provisional filing fee or cover sheet</td><td></td></tr> <tr><td>Extension for response within first month</td><td></td></tr> <tr><td>Extension for response within second month</td><td></td></tr> <tr><td>Extension for response within third month</td><td></td></tr> <tr><td>Extension for response within fourth month</td><td></td></tr> <tr><td>Notice of Appeal</td><td></td></tr> <tr><td>Filing a brief in support of an appeal</td><td></td></tr> <tr><td>Request for oral hearing</td><td></td></tr> <tr><td>Petition to revive unavoidably abandoned application</td><td></td></tr> <tr><td>Petition to revive unintentionally abandoned application</td><td></td></tr> <tr><td>Issue fee</td><td></td></tr> <tr><td>Petitions to the Commissioner</td><td></td></tr> <tr><td>Petitions related to provisional applications</td><td></td></tr> <tr><td>Submission of Information Disclosure Stmt.</td><td></td></tr> <tr><td>Recording each patent assignment per property</td><td></td></tr> <tr><td>Other fee (specify) <u>Advance Order (10 copies)</u></td><td></td></tr> <tr><td>Other fee (specify) TERMINAL DISCLAIMER</td><td>\$65</td></tr> <tr> <td style="text-align: right;">SUBTOTAL (3)</td> <td>\$65</td> </tr> </tbody> </table>		Fee Description	Fee Paid	Surcharge-late filing fee or oath		Surcharge - late provisional filing fee or cover sheet		Extension for response within first month		Extension for response within second month		Extension for response within third month		Extension for response within fourth month		Notice of Appeal		Filing a brief in support of an appeal		Request for oral hearing		Petition to revive unavoidably abandoned application		Petition to revive unintentionally abandoned application		Issue fee		Petitions to the Commissioner		Petitions related to provisional applications		Submission of Information Disclosure Stmt.		Recording each patent assignment per property		Other fee (specify) <u>Advance Order (10 copies)</u>		Other fee (specify) TERMINAL DISCLAIMER	\$65	SUBTOTAL (3)	\$65
Fee Description	Fee Paid																																										
Surcharge-late filing fee or oath																																											
Surcharge - late provisional filing fee or cover sheet																																											
Extension for response within first month																																											
Extension for response within second month																																											
Extension for response within third month																																											
Extension for response within fourth month																																											
Notice of Appeal																																											
Filing a brief in support of an appeal																																											
Request for oral hearing																																											
Petition to revive unavoidably abandoned application																																											
Petition to revive unintentionally abandoned application																																											
Issue fee																																											
Petitions to the Commissioner																																											
Petitions related to provisional applications																																											
Submission of Information Disclosure Stmt.																																											
Recording each patent assignment per property																																											
Other fee (specify) <u>Advance Order (10 copies)</u>																																											
Other fee (specify) TERMINAL DISCLAIMER	\$65																																										
SUBTOTAL (3)	\$65																																										
2. Payment enclosed: Check in the amount of _____																																											
FEE CALCULATION <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee</th> </tr> </thead> <tbody> <tr><td>Utility filing fee</td><td></td></tr> <tr><td>Design filing fee</td><td></td></tr> <tr><td>Plant filing fee</td><td></td></tr> <tr><td>Reissue filing fee</td><td></td></tr> <tr><td>Provisional filing fee</td><td></td></tr> <tr> <td style="text-align: right;">SUBTOTAL (1)</td> <td>\$0</td> </tr> </tbody> </table>		Fee Description	Fee	Utility filing fee		Design filing fee		Plant filing fee		Reissue filing fee		Provisional filing fee		SUBTOTAL (1)	\$0																												
Fee Description	Fee																																										
Utility filing fee																																											
Design filing fee																																											
Plant filing fee																																											
Reissue filing fee																																											
Provisional filing fee																																											
SUBTOTAL (1)	\$0																																										
2. Claims <table border="1"> <thead> <tr> <th></th> <th>Paid</th> <th>Extra</th> <th>Fee</th> </tr> </thead> <tbody> <tr> <td>Total Claims</td> <td>- 20</td> <td>= 0</td> <td>x 25 =</td> </tr> <tr> <td>Independent Claims</td> <td>- 3</td> <td>= 0</td> <td>x 100 =</td> </tr> <tr> <td>Multiple Dependent (First presentation)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">SUBTOTAL (2)</td> <td></td> <td></td> <td>\$0</td> </tr> </tbody> </table>					Paid	Extra	Fee	Total Claims	- 20	= 0	x 25 =	Independent Claims	- 3	= 0	x 100 =	Multiple Dependent (First presentation)				SUBTOTAL (2)			\$0																				
	Paid	Extra	Fee																																								
Total Claims	- 20	= 0	x 25 =																																								
Independent Claims	- 3	= 0	x 100 =																																								
Multiple Dependent (First presentation)																																											
SUBTOTAL (2)			\$0																																								

Submitted By:

Typed or

Printed Name Kathleen D. Ricaut, Ph.D., J.D. Reg. Number 43,047

Deposit Account User ID

04-1406Date January 19, 2006

PAGE 2/7 * RCVD AT 1/19/2006 4:41:36 PM [Eastern Standard Time] * SVR:USPTO-EFXXRF-6/35 * DNIS:2738300 * CSID:215 563 4044 * DURATION (mm-ss):02-24